

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

VERISIGN, INC.,

Plaintiff,

vs.

XYZ.COM, LLC AND DANIEL NEGARI,

Defendants.

Case No. 2:15-cv-00871-TSZ

Re: Subpoena Issued In Civil Action No.  
1:14-CV-01749 (E.D. Va.)

VeriSign, Inc.'s Reply Brief in Further Support  
of Its Motion for Reconsideration and  
Disposition of Its Outstanding Motion to  
Compel

Note On Motion Calendar: July 24, 2015

**REPLY BRIEF IN FURTHER SUPPORT OF MOTION FOR RECONSIDERATION**

Under Rule 7(h) of the Local Civil Rules, a district court may reconsider a prior ruling if a party identifies new facts that would have been relevant to the court's initial decision, but could not have been brought to the court's attention before its ruling. VeriSign, Inc. ("Verisign") has identified new facts and has met that burden here.

The emails Defendant XYZ.com LLC ("XYZ") produced on the eve of the Court's ruling regarding Donuts Inc.'s Motion to Quash confirm a close relationship between Donuts and the Defendants in the underlying action and prove that Donuts' CEO has been advising XYZ on how to conduct the litigation with Verisign pending in the Eastern District of Virginia. Confronted with this new information, Donuts does not refute that there is a more significant connection between Donuts and the Defendants than indicated in the company's prior representations to this Court. Instead, Donuts now relies on carefully crafted arguments that attempt to attack the link between the new emails and Verisign's claims in the underlying litigation. The company's contentions, however, miss the mark. The sole issue before the Court is whether these new emails tend to show that internal Donuts communications regarding Daniel Schindler's NPR appearance may be relevant to Verisign's claims in the underlying case. In light of the true nature of the relationship between Donuts and the Defendants, now revealed by this new evidence, it is clear that Donuts likely has documents that are relevant to Verisign's claims.

Throughout this dispute, Donuts has maintained that it is a complete stranger to the underlying case. The company has expressed ignorance regarding the subject matters of that litigation and has insisted that the burdens associated with responding to the subpoena outstrip the potential relevance of any documents in its possession. The newly discovered emails between Donuts' CEO, Paul Stahura, and Defendant Daniel Negari have demonstrated that both of those contentions are false. To the extent the Court's decision placed any weight on the arguments advanced by Donuts based on the burdens of compliance with the subpoena—arguments that rested solely on its status as an innocent third-party—that ruling should be reconsidered. Similarly, to the extent that the Court concluded that Donuts was not likely to

1 have documents relevant to the underlying litigation based on its non-party status, the new  
 2 evidence demonstrating that its CEO has been advising XYZ on how to defend the claims  
 3 advanced by Verisign proves that there likely are relevant documents in Donuts' files.

4 Donuts cannot hide its substantial and direct relationships to both the Defendants and the  
 5 underlying litigation itself. And against the backdrop of those relationships, Donuts can no  
 6 longer avail itself of claims of "burden" to shield relevant evidence from discovery. From its  
 7 opening Motion to Quash, which was supported by an affidavit submitted by XYZ's and  
 8 Negari's counsel, to its most recent submission to the Court, which sought to diminish the true  
 9 nature of the communications between Stahura and Negari, Donuts has gone to great lengths to  
 10 curtail discovery that is highly relevant to Verisign's claims. Enough is enough. The charade is  
 11 over, and it is time for Donuts to comply with its discovery obligations. This is especially so  
 12 given the very broad discovery allowed under the Federal Rules. *See* Fed. R. Civ. P. 26.

13 **I. The Newly Discovered Emails Show That Donuts Likely Has Relevant Documents.**

14 The newly discovered emails produced by XYZ show that Donuts' Chief Executive  
 15 Officer, Paul Stahura, provided secret advice to Negari regarding the underlying litigation.  
 16 Specifically, the emails reveal Stahura urged Negari to use the case as an opportunity to:

- 17 • "get a ton of discovery out of Verisign;"
- 18 • determine whether Verisign was "discounting" or offering "rebates;" and
- 19 • obtain documents from Verisign's business partners, including GoDaddy.

20 *See* ECF No. 16, at 3-4. Confronted with this stark evidence showing the nature of the  
 21 communications between Stahura and Negari, Donuts now seeks to dismiss Stahura's  
 22 commentary as "facetious" remarks. ECF No. 20, at 4. Viewed in the proper context, however,  
 23 the company's claim that the exchange between Stahura and Negari was nothing more than  
 24 "banter between two people in the same industry" is not credible. *Id.*

25 Stripped of its surrounding rhetoric, Donuts' argument that Stahura's statements were  
 26 "facetious" stands alone and unsupported in its brief. The company has not submitted any  
 27 evidence to support its contention that Stahura's remarks were made in jest. Most notably,

Donuts did not submit any sworn affidavit from Stahura attempting to explain his remarks, nor did it provide any other emails to show his comments were not to be taken seriously. The absence of such materials is telling, particularly because the Defendants have followed Stahura's advice and sought a "ton" of discovery from Verisign and GoDaddy. *See* ECF No. 16, at 3-4.

The fact remains, contrary to Donuts' prior representations to this Court, *see, e.g.*, ECF No. 1, at 1, that Donuts and Stahura are intimately familiar with the Defendants and the details of the underlying litigation. Consequently, an order requiring Donuts to produce internal communications regarding Daniel Schindler's NPR appearance is necessary and would be reasonable. Given the nature of the relationship between Donuts and the Defendants, candid exchanges between Stahura, Schindler, or other Donuts employees are likely to provide invaluable insight into Negari's state of mind at the time of his false statements during the NPR program, which is relevant to Verisign's claim for attorney's fees under the Lanham Act.

## **II. Donuts Ignores the Importance of the Relationship Between Stahura and Negari.**

Each of the arguments advanced by Donuts in response to Verisign's Motion for Reconsideration ignores the significance of the relationship between Stahura and Negari.

*First*, contrary to Donuts' contentions, Verisign does not need to show that the newly discovered emails are *themselves* relevant to its claims in the underlying case.<sup>1</sup> *Cf.* ECF No. 20, at 2-3. Rather, Verisign must only show that the newly discovered emails have independent significance for the purpose of resolving this discovery dispute. Verisign has met that burden. The newly discovered emails prove that there is a substantial connection between Donuts and the Defendants, and as the strength of that connection has become more apparent, it has confirmed that Donuts is likely to have relevant, responsive documents in its possession.

*Second*, Verisign does not need to prove that the newly discovered emails reflect Negari's

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<sup>1</sup> Moreover, Donuts' claim that "the email has nothing to do with the object of the subpoena request itself," ECF No. 20, at 2, is false. Through its pending Motion for Reconsideration, Verisign has asked the Court to compel production in response to the first request in its subpoena, which seeks "All communications to, from, or copying Defendants relating to Verisign or the .COM gTLD from January 1, 2012 to present." ECF 8-11, at 1. The newly discovered emails between Stahura and Negari are responsive to that request.

1 state of mind at the time of his false statements on the NPR program. Instead, the relevant  
 2 question is whether there are likely to be *other* documents within Donuts' files that shed light on  
 3 Negari's state of mind at the time of his false statements. Again, the newly discovered emails  
 4 reflect the link between Donuts and the XYZ Defendants, which runs directly through the firms'  
 5 respective Chief Executive Officers. That relationship, combined with an appearance from  
 6 Daniel Schindler, one of Donuts' co-founders, on the same NPR program in which Negari made  
 7 the false statements at issue in the underlying litigation, is significant. Considered together,  
 8 these factors establish that Donuts is likely to have relevant evidence, and they diminish any  
 9 concerns regarding discovery burdens that might otherwise apply to non-parties.

10 *Third*, Donuts' argument that the new emails are irrelevant because they involve  
 11 communications with Stahura, instead of communications with Schindler, cannot withstand  
 12 scrutiny. Stahura communicated with Negari in his capacity as Donuts' CEO, and Schindler  
 13 appeared on the NPR program in his capacity as a co-founder of Donuts. The frequency of the  
 14 interactions between the Defendants and these key Donuts employees establishes that relevant  
 15 documents likely reside in Donuts' files.

16 Verisign requests that the Court reconsider its decision to quash parts of its subpoena, and  
 17 order Donuts, in light of this new information, to make a full and complete production in  
 18 response to the subpoena. *Cf.* Order ¶ 2(a), ECF No. 13.

#### 19 **REPLY IN FURTHER SUPPORT OF OUTSTANDING MOTION TO COMPEL**

20 Verisign respectfully requests that the Court dispose of the matters that remain  
 21 outstanding from its initial motion to compel, which relate to communications between XYZ and  
 22 Donuts regarding Verisign or the availability of .COM domain names. *See* ECF No. 13. Donuts  
 23 opposes such discovery, arguing that Verisign already obtained complete discovery from XYZ  
 24 and therefore the subpoena is duplicative. This is simply incorrect. First, the Federal Rules do  
 25 not limit discovery to just one party to a relationship or pattern of communication. Indeed, it is  
 26 the comparison of such documents (or deleted documents) that often proves most relevant in  
 27 litigation. Second, Donuts' argument ignores what is increasingly becoming clear: XYZ is

purposefully taking steps to obfuscate discovery. Not only has Verisign had to move for court intervention in Virginia, it recently discovered that XYZ utilizes email accounts that have never been searched for responsive discovery. This Court should order Donuts to make full discovery.

As discovery in the underlying case has confirmed, Verisign's suspicion that the XYZ Defendants' document retention policies permitted deletion of relevant emails was well-founded. *See* ECF No. 16, at 6. In his most recent deposition, Negari acknowledged that he deletes emails in the ordinary course of business, Weigand Aff. Ex. 1, D. Negari Dep. 106:13-16 (July 6, 2015), and he admitted that his emails can also be deleted when his email inbox reaches its capacity limit, *id.* at 107:1-10. Consequently, Negari's testimony indicates that relevant evidence may no longer exist in XYZ's files and confirms that Verisign is entitled to discovery of responsive communications from Donuts' files.

Moreover, contrary to the misleading arguments in Donuts' brief, *see* ECF No. 20, at 5, Verisign expressly withdrew its prior motion to compel *without prejudice* to allow further examination of XYZ's production and to provide time to meet and confer. ECF No. 16-1, DePalma Aff. ¶ 6. Indeed, through that process, on July 22, 2015, Verisign discovered that XYZ employees, including Negari, use "Cyber2Media" email accounts to send information that is directly relevant to XYZ and the underlying case. Weigand Aff. ¶¶ 4-6. Defendants did not search their Cyber2Media email accounts to respond to discovery, and Verisign has moved to compel production from those accounts. Motion to Compel, *VeriSign, Inc. v. XYZ, et al.*, Case No. 1:14-cv-01749 CMH-MSN (E.D. Va. July 24, 2015) (ECF No. 169). Emails Negari sent to Donuts personnel from his Cyber2Media account have not been produced in the Virginia action, and that is an additional reason the Court should compel Donuts to make the production here.

### CONCLUSION

In light of the foregoing, Verisign respectfully requests that the Court (1) reconsider its June 15, 2015 order granting Donuts' Motion to Quash with respect to internal Donuts communications regarding Schindler's NPR appearance; and (2) with respect to the outstanding matters in the initial motion, order Donuts to provide a full response to Verisign's subpoena.

1 DATED: July 24, 2015

Respectfully submitted,

2 QUINN EMANUEL URQUHART &  
3 SULLIVAN, LLP

4  
5 By /s/ Jenny A. Durkan

6 Jenny A. Durkan  
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**CERTIFICATE OF SERVICE**

I, Jenny Durkan, am a partner at Quinn Emanuel Urquhart & Sullivan, LLP, and I represent VeriSign, Inc. in this action. I hereby certify that on July 24, 2015, I caused the foregoing document to be served on Donuts Inc. by filing the document through ECF and emailing the company's counsel of record at the addresses below:

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I declare under the penalty of perjury that the foregoing is true and correct.

DATED: July 24, 2015

Respectfully submitted,

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